

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 IVAN G. PIVAROFF, *et al.*,

8 Defendants.

Case No. 2:13-CV-01498-APG-PAL

**ORDER (1) DENYING MOTION TO  
AMEND COMPLAINT AS MOOT, (2)  
GRANTING MOTION FOR LEAVE TO  
FILE SECOND AMENDED  
COMPLAINT, AND (3) GRANTING  
MOTION FOR LEAVE TO FILE AN  
AMENDED ANSWER**

(DKT. NOS. 78, 98, 99)

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13 On December 22, 2014, plaintiff United States of America moved for leave to amend the  
14 complaint to join as a defendant Lakeland, Inc. and to sue current defendant Blenheim Trust  
15 Company, Ltd. (already sued in its capacity as trustee of the Kihei International Trust) in its  
16 capacity as trustee of VIP International Trust. The proposed second amended complaint also  
17 proposes to add new claims against existing defendants. Although the United States indicated in  
18 its motion that the Pivaroff defendants did not consent to the amendment, no opposition was filed  
19 by any party.

20 Prior to the court ruling on that motion, the United States filed a superseding motion to  
21 amend the complaint. The United States seeks to make all the amendments previously requested  
22 and to joint three additional parties. The United States indicated that the Pivaroffs previously had  
23 not consented to amendment but the Pivaroffs did not definitively respond with respect to the  
24 superseding motion to amend. No opposition was filed by any party.

25 Defendant Associated Enterprises Limited then filed a motion for leave to file an amended  
26 answer so that it could add a cross-claim against fellow defendant Oahu Limited Partnership.  
27 Defendant Associated Enterprises Limited states in its motion that the United States does not  
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1 oppose amendment, but the Pivaroffs advised they do not consent to the amendment. However,  
2 no opposition has been filed by any party.

3 Generally, a plaintiff may amend its complaint “once as a matter of course within . . . 21  
4 days of serving it,” or within 21 days after service of a responsive pleading or motion. Fed. R.  
5 Civ. P. 15(a)(1). Otherwise, “a party may amend its pleading only with the opposing party’s  
6 written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). “The court should freely give  
7 leave when justice so requires.” *Id.*; see also *Foman v. Davis*, 371 U.S. 178, 182 (1962) (“Rule  
8 15(a) declares that leave to amend ‘shall be freely given when justice so requires’; this mandate is  
9 to be heeded.”). I consider five factors to assess whether to grant leave to amend: (1) bad faith,  
10 (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment[,] and (5) whether  
11 plaintiff has previously amended the complaint. *Sonoma Cnty. Ass’n of Retired Emps. v. Sonoma*  
12 *Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013). Whether to grant leave to amend lies within my  
13 discretion. *Zivkovic v. So. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

14 I grant the United States’ superseding motion to amend. No party has formally opposed  
15 amendment. There is no evidence of bad faith. The United States explains that amendment is  
16 based on evidence uncovered during discovery, and the motion to amend was timely filed on the  
17 cutoff date to amend pleadings in the Scheduling Order (Dkt. #90). There is no evidence of  
18 undue delay and no party argues amendment was unduly delayed. No prejudice to any party has  
19 been identified. It does not appear amendment would be futile. The United States has not  
20 previously moved to amend, other than the prior motion which is being superseded by this  
21 motion. I therefore grant it. The United States shall file the superseding proposed second  
22 amended complaint within 10 days of the entry of this order.

23 I also grant defendant Associated Enterprises Limited’s motion to amend its answer to add  
24 a cross-claim. No party has formally opposed the motion. There is no evidence of bad faith.  
25 Although Associated Enterprises Limited does not explain when it uncovered information  
26 triggering amendment, the motion to amend was timely filed on the cutoff date to amend  
27 pleadings in the Scheduling Order (Dkt. #90). There is no evidence of undue delay and no party  
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1 argues this amendment was unduly delayed. No prejudice to any party has been identified. It  
2 does not appear that amendment would be futile. Finally, Associated Enterprises Limited has not  
3 previously moved to amend its answer. I therefore grant the motion. Associated Enterprises  
4 Limited shall file the proposed amended answer with cross-claim within 10 days of entry of this  
5 order.

6 IT IS THEREFORE ORDERED that plaintiff United States' motion to amend complaint  
7 (Dkt. #98) is GRANTED. The United States shall file the proposed superseding second amended  
8 complaint within 10 days of entry of this order.

9 IT IS FURTHER ORDERED that defendant Associated Enterprises Limited's motion for  
10 leave to file amended answer and cross-claim (Dkt. #99) is GRANTED. Associated Enterprise  
11 Limited shall file the proposed amended answer and cross-claim within 10 days of entry of this  
12 order.

13 IT IS FURTHER ORDERED that plaintiff United States' motion to amend (Dkt. #78) is  
14 DENIED as moot.

15 DATED this 25th day of June, 2015.

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19 ANDREW P. GORDON  
20 UNITED STATES DISTRICT JUDGE  
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